(1)Mohini Devi vs. State
(S.B.Civil Writ Petition No. 482/06)

(2) Tej Singh Deora vs. State.
(S.B.Civil Writ Petition No. 1204/06)

Dated:- 10.12.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Sandeep Shah , for the petitioner.
Mrs. R.R.Kanwar,Dy.Government Advocate
Mr. D.S.Rajvi, for the respondents.

In these writ petitions, the petitioners have challenged the cancellation of the auction of the commercial plots knocked down in their favour and so also the fresh auction proceedings sought to be initiated by the Executive Officer, Municipal Board, Sumerpur in pursuance of directions issued by the District Collector, Pali vide communication dated 6.12.05(Annex.8).

The brief facts of the case are that the respondent Municipal Board issued an auction notice date 27.6.05 (Annex.1), whereby various residential and commercial plots, shops, godown/plinth level plots were proposed to be auctioned. After depositing the earnest money, the petitioners participated in the auction for the shops/commercial plots mentioned at Sr. No. 5 of the auction notice . Petitioner Mohini Devi was the highest bidder for shop no.1 and petitioner Tej Singh Deora was the highest bidder for shop no.3, accordingly, the auction was knocked down in their favour and in pursuance thereof, they deposited 1/4th of the bid amount on the date of auction itself. Thereafter, they approached the respondent Board for depositing the remaining

amount, however, they were verbally informed that the auction proceedings are under consideration and they will be informed about the acceptance of the bid at the earliest.

Vide communication dated 9.12.05(Annex.3) issued by the Executive Officer of the respondent Board,the petitioners were informed that since during the auction proceedings from 11.8.05 to 16.8.05, the representative of the District Collector, Pali was not present, therefore, the auction proceedings has been cancelled by the District Collector, Pali. The petitioners were directed to collect the 1/4th bid amount deposited by them, from the Municipal Board.

The communication dated 6.12.05 sent by the District Collector, Pali addressed to the Executive Officer, Municipal Board, Sumerpur has also been placed on record as Annex.8, whereby an explanation has been sought from the Executive Officer as to why the auction proceedings have been conducted in absence of the Tehsildar, Sumerpur, the representative of District Collector, Pali appointed vide communication dated 20.7.05 and further, while refusing the approval of the bids, the Executive Officer has been directed to hold fresh auction of the four shops.

It is submitted on behalf of the petitioners that the auction conducted was absolutely in accordance with law. The reliance in this regard has been placed on clause (b)(vi) of Annexure A attached to the Rajasthan Municipalities (Disposal of Urban Land)

Rules, 1974, wherein inter alia, it has been provided that when the Collector or his representative is not present at the time of auction despite intimation, the auction shall proceed under the supervision of Chairman/Administrator and the Executive Officer.

A reply to the writ petition has been filed on behalf of the respondents no. 3 and 4 in both the matters wherein it is averred that on 16.8.05, the Tehsildar , Sumerpur was deputed on election duty by the State Election Commission, therefore, he could not remain present during the auction proceedings held on 16.8.05, however, no intimation regarding his non availability on the said date was received by the Municipal Board.

It is contended on behalf of the respondent Board that under the Rules of 1974, the respondent Board has no authority to accept or reject the highest bid and the confirmation of the highest bid having been refused by the District Collector vide order dated 16.12.05, the Executive Officer has rightly passed the order dated 19.12.05 directing the petitioners to collect 1/4th of bid amount deposited by them.

Learned Dy. Government Advocate has contended that as per clause (b)(ii) of Annexure A attached to the Rules of 1974 which governs sale of plots by public auction specifically provides that the auction proceedings shall take place under the supervision of the Collector concerned or his representative or the Executive Officer of the Board. That apart , the highest bid was subject to confirmation by the Collector, therefore, the

decision taken by the Collector refusing the confirmation of the bid for the reasons set out in communication dated 6.12.05 (Annex.8) does not suffer from any infirmity or illegality.

I have considered the rival submissions and perused the record.

Admittedly, the disposal of the urban land in the municipal area is governed by the Rules of 1974. Allotment and sale of non residential land within the municipal area is regulated by Rule 15 of the Rules of 1974 . As per Rule 15(2),the land of commercial nature, for the purposes other than specified in sub-rule(3) to (15) shall be disposed of by public auction as prescribed in Annexure A attached to the Rules of 1974. It is to be noticed that as per clause (b)(ii), the auction proceedings shall take place under the supervision of the Collector concerned or his representative and the Executive Officer of the Board. For this purpose, as per clause (b)(iii), the Executive Officer shall intimate the date , time and place of auction to the Collector at least before 15 days of the date of auction and shall ensure that intimation has been delivered to the Collector. However, clause (b)(vi) specifically provides that where the Collector or his representative is not present at the time of auction despite the said intimation, the auction shall be held under the supervision of Chairman/Administrator and the Executive Officer ,provided that in such case, confirmation of auction proceeding shall be obtained from the Collector. Suffice it to say that the absence of

the Collector or his representative even after due intimation, does not render the auction proceedings invalid. The only rider in such a case is that auction proceedings shall be subject to the confirmation by the Collector.

It is not in dispute that the intimation of the auction scheduled, with necessary details was sent by the Executive Officer of the respondent Board to the District Collector, Pali vide communication dated 29.6.05 (Annexure R/3/1). However, the same was not responded , therefore, a reminder dated 16.7.05 (Annex.R/3./2) was sent and in pursuance thereof vide order dated 20.7.05, the District Collector, Pali appointed Tehsildar, Sumerpur, as his representative to supervise the auction. The intimation regarding the order dated 20.7.05 passed by the District Collector , Pali was sent to the Tehsildar, Sumerpur, vide communication dated 26.07.05 by the Executive Officer of the respondent Board as well. Thus, the intimation regarding the auction having been sent by the Executive Officer to the District Collector, Pali and who in his turn having appointed the Tehsildar, Sumerpur as his representative for the purpose , if for any reason, the said representative has not been able to remain present to supervise the auction on the date fixed then, on account of his absence, the auction proceedings could not have been cancelled. Thus, the decision taken by the District Collector apparently runs contrary to the provisions of the Rules which govern the sale of the non residential plots in the municipal area

by public auction. Therefore, the same is not sustainable in eye of law.

However, as per clause (b)(vi) of Annexure A, the auction proceedings being subject to confirmation by the District Collector, the matter deserves to be remanded to the District Collector to take a decision afresh regarding the confirmation of the auction proceedings in accordance with law.

In the result, the writ petition is allowed. The impugned order dated 6.12.05 (Annexure 8) passed by the District Collector, Pali communicated to the petitioners vide communication dated 9.12.05 issued by the Executive Officer of the Municipal Board, Sumerpur is quashed and set aside. The District Collector, Pali is directed to consider the matter of confirmation of auction proceedings afresh in accordance with law.

The appropriate decision shall be taken by the District Collector, Pali within a period of one month from the date of this order. If the auction proceedings is confirmed by the Collector, then on petitioners depositing remaining bid amount the possession of the shops in question shall be handed over to them by the respondent Board forthwith. If the confirmation is refused by the Collector, petitioners shall be at liberty to assail the validity of decision of the Collector, in accordance with law.

No order as to costs.

(SANGEET LODHA),J.